IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 1ST FEBRUARY 2007 / 12TH MAGHA 1928

**FAO.No. 141 of 2006()**

AGAINST THE ORDER DATED 10/04/2006 IN IA.NO.179 OF 2006 IN OS.22/2006 OF SUB COURT, NEDUMANGAD

APPELLANTS/COUNTER PETITIONER/DEFENDANTS
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1. MOHANDAS, S/O. NALLATHAMPI, AGED 40,
VINOD BHAVAN, ARANAMKODEU,
KADAMBANATTU MURI, ARUVIKKARA VILLAGE,
NEDUMANGADU TALUK.

2. REETHA, D/O. NASAMMA, AGED 36, DO. DO.

BY ADV. SRI.THIRUMALA P.K.MANI

RESPONDENTS: PETITIONER/PLAINTIFF
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R.SURESH, S/O. RAJARATHNAM, AGED 33,
KRISHNA BHAVAN, CHERIYAKONNI,
KADAMBANADU MURI, ARUVIKKARA VILLAGE,
NEDUMANGADU TALUK.

BY ADV. SRI.M.DINESH
SRI.BASANT BALAJI

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 01/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**I.A.NO.1603/2006 IN F.A.O.NO.141/2006**

DISPOSED OF VIDE JUDGMENT IN APPEAL

SD/- KURIAN JOSEPH, JUDGE

01/02/2007 SD/- K.T.SANKARAN, JUDGE

//TRUE COPY//

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**KURIAN JOSEPH & K.T. SANKARAN, JJ.**

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**F.A.O.NO. 141 OF 2006**

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**Dated this the 1st day of February, 2007**

**JUDGMENT**

**Sankaran, J.**

Defendants 2 and 3 in O.S.No.22 of 2006, on the file of the Sub Court, Nedumangad, are the appellants. They challenge the order dated 10.4.2006 in I.A.No.179 of 2006, by which the court below granted temporary injunction restraining the appellants herein from entering into the plaint schedule property and from alienating the property.

2. The case of the plaintiff is that on 5.1.2006, he entered into an agreement for sale with the first defendant for a consideration of Rs.1,57,500/- and an advance of Rs.5,000/- was paid. The plaintiff further alleges that he was put in possession of the plaint schedule property. Defendants 2 and 3, who contested the suit,

contended that they purchased the property as per the registered assignment deed dated 10.2.2006, executed by the first defendant in their favour. It was also contended by the defendants that the agreement relied on by the plaintiff is a fabricated one.

3. The court below compared the signature of the first defendant in Ext.A1 agreement and his signatures available in the records of the Court and held that prima facie, it appears that those signatures are put by the same person. The court below held that Ext.A1 agreement prima facie appears to be genuine and that the contention of the defendants that it is a forged one is not convincing.

4. There is no discussion in the order passed by the court below as to how the plaintiff got possession of the property. Ext.A1 agreement does

not show that possession was handed over to the plaintiff at the time of executing the agreement. There is no material also to come to the conclusion that the plaintiff obtained possession thereafter. The question whether defendants 2 and 3 are bona fide purchasers or not, is a matter to be considered at the stage of trial. So also, the question whether the plaintiff is entitled to a decree for specific performance can also be considered after adducing evidence.

5. At the time when the F.A.O was admitted, the operation of the order impugned was stayed for a period of one month and the stay was being extended from time to time. The stay is in operation even now. Defendants 2 and 3 have filed O.S.No.142 of 2006, on the file of the court of the Munsiff of Nedumangad, against the present plaintiff for declaration of title and injunction and that suit is pending. Since the parties in

O.S.No.142 of 2006 and the present suit are the same and the subject matter is also the same, it is only just and proper that both the suits are jointly tried and disposed of by the same Court. Counsel on both sides agreed that O.S.No.142 of 2006 can be transferred to the Sub Court, Nedumangad, to be tried and disposed of along with O.S.No.22 of 2006.

6. Since the order impugned was stayed and that stay is in operation, we do not think that it is necessary to consider the contentions of the parties on the merits, particularly in view of the fact that two suits between the parties are pending disposal. The status quo as on today shall continue till the disposal of the suit, the status quo being that the order impugned has been stayed. O.S.No.142 of 2006, pending on the file of the Munsiff's Court, Nedumangad shall stand transferred to the Sub Court, Nedumangad for trial and disposal

along with O.S.No.22 of 2006. The trial court shall dispose of both the suits untrammelled by any of the observations and findings contained in the order impugned as well as in this judgment, within a period of three months from the date of receipt of a copy of this judgment. A copy of this judgment shall be communicated to the Munsiff's Court, Nedumangad to facilitate transfer of O.S.No.142 of 2006 to Sub Court, Nedumangad.

The F.A.O is disposed of as above.

**(KURIAN JOSEPH)**
**Judge**

**(K.T.SANKARAN)**
**Judge**

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